IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5872 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SUPERINTENDING ENGINEER (O&M) & 1 - Petitioner(s)
Versus
ASHOKVIJAY B. BUCH - Respondent(s)

==========

Appearance :
MR SP HASURKAR for Petitioners
MR DS VASAVADA for Respondent

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/07/2007

ORAL JUDGMENT

1. The petitioner, being aggrieved by the order dated 3.3.01, passed by the Presiding Officer, Labour Court, Junagadh in Recovery Application No.235/93, is before this Court.

2. The short facts necessary for disposal of the present writ application are that the respondent Ashok Vijay B. Buch filed an application under Section 33C[2] of the Industrial Disputes Act with a submission that as he was working as Junior Clerk but was being paid the salary of Weigh Bridge Attendant, difference be directed to be paid to him. The present petitioners, as non-applicants before the Labour Court submitted that the present respondent was appointed as Weigh Bridge Attendant and was never appointed as Junior Clerk nor was ever promoted to the post of Junior Clerk, therefore, he was not entitled to any relief in his favour. Despite there being a dispute into the entitlement of the present non-applicant and plea of denial, the learned Labour Court entered into the factual arena and after recording the evidence and placing reliance upon certain recommendations made on 27.3.1966 by the Executive Engineer to the Superintending Engineer, held that the workman would be entitled to the difference. The law in relation to Section 33C[2] has been crystallized by the Apex Court time and again and is not res integra. According to the Apex Court, if there is pre-adjudicated right or pre-established right or undisputed right, then, an application for recovery under Section 33C[2] would be maintainable and not otherwise. The Apex Court has also observed that proceedings under Section

33C[2] are in nature of execution, therefore, they must be preceded by an order, an award, settlement or legal foundation. In the present case, in the considered opinion of this Court, the Labour Court had no jurisdiction to enter into the question of disputed facts, record a finding into the entitlement and then, award the difference.

3. The petition deserves to and is accordingly allowed but however, with a clarification that dismissal of the application filed under Section 33C[2] would not affect the respondent's right to seek Reference under Section 10 of the Industrial Disputes Act. Rule is made absolute. No costs.

[R.S. GARG, J.]

pirzada/-